

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

OTIS MICHAEL BRIDGEFORTH,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 10-583-GMS
)	
DART FIRST STATE DIVISION OF)	
DELDOT, DELAWARE DEPARTMENT)	
OF TRANSPORTATION, J. KIRCHNER,)	
D. YOUNG, and DELAWARE STATE)	
POLICE TROOP 6,)	
)	
Defendants.)	

MEMORANDUM

The plaintiff Otis Michael Bridgeforth ("Bridgeforth"), filed this lawsuit on July 8, 2010, pursuant to 42 U.S.C. § 1983. (D.I. 2.) He appears *pro se* and has been granted leave to proceed without prepayment of fees pursuant to 28 U.S.C. § 1915. (D.I. 4.) The court proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915.

I. BACKGROUND

Bridgeforth alleges that on July 8, 2010, he was the victim of race and sex discrimination when he was unlawfully removed from a DART bus. Bridgeforth was subsequently searched by the defendants J. Kirchner ("Kirchner") and D. Young ("Young"), both Delaware River and Bay Authority Officers. Bridgeforth alleges he was searched without probable cause.

II. STANDARD OF REVIEW

This court must dismiss, at the earliest practicable time, *in forma pauperis* actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The court must accept all factual

allegations in a complaint as true and take them in the light most favorable to a *pro se* plaintiff. *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because Bridgeforth proceeds *pro se*, his pleading is liberally construed and his complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. at 94 (citations omitted).

An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915(e)(2)(B)(i), a court may dismiss a complaint as frivolous if it is “based on an indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. *Neitzke*, 490 at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); *see, e.g., Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate’s pen and refused to give it back).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999)(applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. § 1915, the court must grant Bridgeforth leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, –U.S.–, 129 S.Ct. 1937 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544

(2007). The assumption of truth is inapplicable to legal conclusions or to “[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements.” *Id.* at 1949.

When determining whether dismissal is appropriate, the court conducts a two-part analysis.

Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009). First, the factual and legal elements of a claim are separated. *Id.* The court must accept all of the complaint’s well-pleaded facts as true, but may disregard any legal conclusions. *Id.* at 210-11. Second, the court must determine whether the facts alleged in the complaint are sufficient to show that Bridgeforth has a “plausible claim for relief.”¹ *Id.* at 211. In other words, the complaint must do more than allege Bridgeforth’s entitlement to relief; rather it must “show” such an entitlement with its facts. *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than a mere possibility of misconduct, the complaint has alleged - but it has not shown - that the pleader is entitled to relief.” *Iqbal*, 129 S.Ct. at 1949 (quoting Fed. R. Civ. P. 8(a)(2)).

III. DISCUSSION

Named as defendants are DART First State (“DART”), a division of the Delaware Department of Transportation, the Delaware Department of Transportation (“DOT”), and Delaware State Police Troop 6 (“State Police”). The Eleventh Amendment of the United States Constitution protects an unconsenting state or state agency from a suit brought in federal court by one of its own citizens, regardless of the relief sought. *See Pennhurst State Sch. & Hosp. v.*

¹A claim is facially plausible when its factual content allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.*

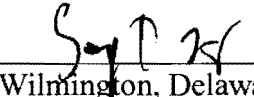
Halderman, 465 U.S. 89 (1984); *Edelman v. Jordan*, 415 U.S. 651 (1974). The State of Delaware has not waived its immunity from suit in federal court, and although Congress can abrogate a state's sovereign immunity, it did not do so through the enactment of 42 U.S.C. § 1983. *Brooks-McCollum v. Delaware*, 213 F. App'x 92, 94 (3d Cir. 2007) (not published) (citations omitted) Finally, state agencies or divisions, such as DART, the DOT, and the State Police, are not persons subject to claims under 42 U.S.C. § 1983. See *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

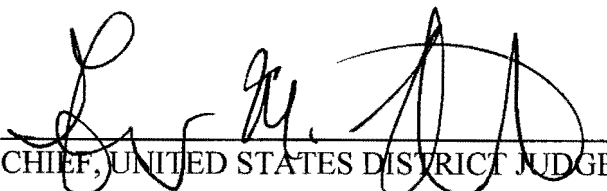
The State defendants are immune from suit. Therefore, the court will dismiss the claims against DART, the DOT, and the State Police as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

IV. CONCLUSION

For the above stated reasons the court will dismiss the claims against DART, the DOT, and the State Police as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Bridgeforth will be allowed to proceed against Kirchner and Young.

An appropriate order will be entered.

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Wilmington, Delaware


CHIEF, UNITED STATES DISTRICT JUDGE